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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of KAREN CUSSINS-
DOYLE and SEAN DOYLE.

2d Civil No. B270800
(Super. Ct. No. FL138558)
(San Luis Obispo County)

KAREN CUSSINS,

Respondent,

v.

SEAN DOYLE,

Appellant.

Sean Doyle appeals a judgment dissolving his marriage to Karen Cussins, dividing property, and allocating debts according to the parties' premarital agreement.¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

On November 5, 2013, Karen filed a petition to dissolve her 10-year marriage to Sean. The parties had entered a premarital agreement on December 10, 2003, and married two days later. At the time, Sean was serving a 23 year 4 month prison term following his conviction of assault with a deadly weapon and six counts of sexual offenses. (*People v. Doyle* (Dec. 6, 2000, B140003) [nonpub. opn.].)

¹ We shall refer to the parties by their first names not from disrespect, but to ease the reader's task.

On July 16, 2015, Karen requested an order from the family law court determining the validity of the premarital agreement. Sean responded in writing, and on October 8, 2015, the court held a contested hearing. Karen was represented by counsel; Sean remains incarcerated and appeared in propria persona by telephone conference call.

Karen presented the original executed 22-page premarital agreement to the family law court, entitled “Uniform Premarital Agreements Act (Family Code §§ 1600-1617) Prenuptial Agreement.” The agreement also contained declarations, acknowledgements, and waivers of the right to independent counsel. The parties initialed each of the 22 pages and signed and dated the agreement on page 18. Karen signed the agreement on October 29, 2003, and carried the original document into prison during visitation. Sean then signed the agreement on December 10, 2003. At the hearing, Karen identified Sean's signature on the premarital agreement.

Karen testified that the agreement was prepared by “a friend of Sean’s who’s also incarcerated, a paralegal.” She stated that she insisted upon a premarital agreement because Sean “had a tax lien” and she “had three minor children.”

In part, the premarital agreement provides that Karen and Sean would hold their respective property interests, including real property, as their individual and separate property. The agreement also provides that neither party assumed the debts or liabilities of the other. Pages 19 through 22 contained a schedule of assets and debts of each party. Sean’s schedule of assets did not set forth a promissory note payable to him from Karen or any real property interests. Sean’s schedule of debts included \$77,000 attorney’s fees and approximately \$22,000 in federal and state tax liabilities. Karen’s schedule of assets set forth real property located at 1712 Sonata Drive in Oxnard; the property’s value was estimated to be \$420,000 with an existing encumbrance of \$336,000. Karen later testified that she “lost” the Sonata Drive property. Her mother was a part owner.

On April 9, 2004, Karen recorded a “Memorandum of Prenuptial Agreement Under Uniform Premarital Agreements Act (Family Code §§ 1600-1617)” (“Memorandum”) with the Ventura County Recorder. The two-page Memorandum was directed to the parties’ past and future creditors, among others. In part, the Memorandum

refers to the written premarital agreement between the parties. It also states that neither party has assumed the debts of the other and that each party's separate property interests remain his or her separate property. Karen and Sean executed the Memorandum and their signatures were notarized. Inexplicably, three pages of a condominium easement legal description were attached to the Memorandum and recorded by the recorder. At the contested hearing, Karen testified that the three extraneous pages pertain to the legal description of her condominium. She could not explain their attachment to the Memorandum. She presented the original Memorandum to the family law court as an exhibit.

Sean objected to admission of the Memorandum into evidence, claiming that the Memorandum is missing three pages containing a promissory note from Karen to him arising from the sale of his real property at 7126 Wolverine Avenue. Karen denied executing a promissory note in favor of Sean. Sean also objected to admission of the premarital agreement into evidence, asserting that his signature and initials were forgeries. Sean testified that he has "never seen" the premarital agreement and that only Karen has the original or a copy of the promissory note payable to him.

The family law court concluded that the premarital agreement complies with requirements of Family Code sections 1600 et seq. and that Sean did not bear his burden of proving the agreement unenforceable pursuant to Family Code section 1615, subdivision (a) and *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 27. The court entered judgment dissolving the marriage, dividing property, and allocating debts in accordance with the premarital agreement (including the schedules) which was attached to the judgment.

The family law court later awarded Karen \$22,303.74 as costs and reasonable attorney's fees pursuant to paragraph 55 of the premarital agreement. That provision provides: "If either party retains counsel for purposes related to this agreement, including, but not limited to, enforcing or preventing the breach of any provision, seeking damages for any breach, or seeking a declaration of his other rights or obligations under the agreement, and the matter is settled by a judicial determination, . . . the prevailing party shall be entitled to recover against the non-prevailing party all litigation expenses, witness

fees, costs, and reasonable attorneys fees, by way of this agreement and operation of California Civil Code § 1717.”

Sean appeals and challenges the validity of the premarital agreement.

DISCUSSION

Sean contends that the premarital agreement does not reflect a \$35,000 promissory note, which arose from “a handshake agreement,” payable to him from Karen. He also claims that his signature was forged on the premarital agreement and that the notary acknowledgement on the Memorandum is defective. Sean requests that we reverse the order for attorney’s fees to Karen and award him attorney’s fees and costs.

An appellant must affirmatively demonstrate error and show such error by citation to the record and supporting authorities. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 8; *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 126.) A judgment or order of the trial court is presumed to be correct; all intendments and presumptions are drawn in favor of the order on matters to which the record is silent. (*Obrecht*, at p. 8.)

In reviewing the sufficiency of the evidence to support a judgment, we review the entire record to determine whether any evidence, contradicted or uncontradicted, supports the trial court’s findings. (*Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 8.) We do not determine the weight of the evidence or the credibility of witnesses. (*Ibid.*) We also do we substitute our reasonable inferences for those drawn by the trier of fact. (*Ibid.*)

These rules apply equally to parties represented by counsel and parties appearing in propria persona. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) A party appearing in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [pro. per. litigants must follow the correct rules of procedure].)

The family law court’s finding that Sean executed the premarital agreement is supported by sufficient evidence. Karen testified that she recognized Sean’s signature

and the court reviewed the original document. (Evid. Code, § 1416.) The court examined Sean's signatures on the premarital agreement and other handwriting exemplars. In its ruling, the court stated that the notarization of Sean's signature was also a factor supporting its finding. (*Id.*, § 1452, subd. (f).) The court was free to reject Sean's expert witness evidence that his signature was probably forged. Thus, Sean did not bear his burden of proof that the premarital agreement was fraudulent.

Sean admitted executing the Memorandum and his signature was notarized. Karen also admitted executing the Memorandum. Any failure of the notary who acknowledged Karen's signature to deliver her notary records to the county clerk is therefore irrelevant. (Gov. Code, § 8209.)

Sean also did not bear his burden of proof that a \$35,000 promissory note existed. Neither the promissory note nor the Wolverine Avenue property is listed on Sean's schedule of assets in the premarital agreement. Indeed, evidence submitted to the family law court shows the Wolverine Avenue property was sold in 2000, three years before the parties executed the premarital agreement and married.

The \$22,303.74 attorney's fee award is also proper. Paragraph 55 of the premarital agreement authorizes attorney's fees to the prevailing party in an action to enforce the agreement. The trial court is best suited to determine the value of the attorney's efforts and award fees accordingly. (*Butler v. LeBouef* (2016) 248 Cal.App.4th 198, 213.)

The judgment is affirmed. Respondent shall recover costs on appeal.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Charles S. Crandall, Judge
Superior Court County of San Luis Obispo

Sean P. Doyle, in pro. per., for Appellant.

Law Office of K. M. Neiswender, Kate M. Neiswender; Lee Hess for
Respondent.